

BILL NO. 31-0447

Thirty-first Legislature of the Virgin Islands

September 13, 2016

An Act to authorize the issuance of bonds, notes or other evidences of indebtedness, the “Series 2016 Bonds”, of the Government of the Virgin Islands and/or the Virgin Islands Public Finance Authority to provide funds to finance all or a portion of the costs of certain capital projects and operating expenses of the Government in an amount not to exceed \$292,000,000; refund all or a portion of various series of the Authority’s outstanding senior lien Gross Receipts Taxes Bonds to provide economic savings and/or cash flow budgetary savings and debt relief; refund all or a portion of various series of the Authority’s outstanding senior lien Matching Fund Revenue Bonds to provide economic savings and/or cash flow budgetary savings and debt relief ; refund all or a portion of the subordinated matching fund revenue bonds issued to finance a grant to Diageo USVI Inc. to provide economic savings and/or cash flow budgetary savings and debt relief ; refund all or a portion of the subordinated matching fund revenue bonds issued to finance a grant to Cruzan VIRIL Ltd. to provide economic savings and/or cash flow budgetary savings and debt relief, the invitation to offer Bonds to the owners of a portion of the Authority’s outstanding bonds to tender such bonds for sale to the Authority, to reduce the cost of refunding such bonds and to maximize cash flow budgetary savings and debt service relief; fund any necessary reserves, and pay the costs of issuance and any other costs and expenses necessary in connection with the issuance of the Series 2016 Bonds, the Government and the Authority to enter into certain agreements, and pledge, either the Matching Fund Revenues on a senior lien or subordinate lien basis, as applicable, and issue limited special obligation notes, on a senior lien or subordinate lien basis, as applicable to secure repayment of the respective Series of Bonds issued to finance any Series 2016 Capital Project or for any Series 2016 MFR Refunding Project, and/or the Gross Receipts Taxes and issue general obligation notes payable from Gross Receipts Taxes to finance any Series 2016 Capital Project or for any Series 2016 GRT Refunding Project, to secure repayment of the respective Series of Bonds issued for the Series 2016 GRT Refunding Project or the Series 2016 Capital Project; and to authorize the Department of Property and Procurement, on behalf of the Government of the Virgin islands, to negotiate, in compliance with 31 V.I.C. 231a (c), the acquisition of certain real property on the island of St. John as the site for the construction of the St. John Elementary and Middle School, to be financed from a portion of the proceeds of the Series 2016 Bonds

PROPOSED BY: Senator Nereida Rivera O'Reilly

1 **WHEREAS**, the Government continues to experience financial challenges as a
2 consequence of the economic downturn of the Great Recession and the closure of the HOVENSA
3 refinery in 2012, resulting in a projected revenue shortfall for fiscal year 2017 of approximately
4 \$110 Million and additional projected revenue shortfalls through Fiscal Year 2020;

5 **WHEREAS**, the Government is currently developing a five-year plan that will include,
6 but not be limited to, reviewing various revenue-generating initiatives to address such projected
7 revenue shortfalls, including, but not limited to, a focused tax collection campaign by the Virgin
8 Islands Internal Revenue Bureau and accelerated efforts to increase federal grant financing and
9 release of federal funds to meet critical operating costs and organizational restructuring (the “Five-
10 Year Plan”); and

11 **WHEREAS**, the projected increase in revenues from such revenue generating initiatives
12 is projected to be insufficient to fully eliminate the projected revenue shortfall in fiscal years 2017
13 through 2020; and

14 **WHEREAS**, in order to provide for near-term cash flow relief to address the projected
15 revenue shortfall while the Government’s Five-Year Plan is implemented, and the results thereof
16 are realized, the Government, through the Authority, has developed the Series 2016 MFR
17 Refunding Project and the Series 2016 GRT Refunding Project described above to provide
18 economic savings in debt service and to restructure certain outstanding debt service obligations to
19 provide debt service relief in fiscal years 2017 through 2020, which, together with the Five-Year
20 Plan, will promote fiscal stability and spur economic growth; and

21 **WHEREAS**, in order to maximize the cash flow budgetary relief to the Government, the
22 Authority intends to release an invitation to offer certain outstanding Matching Fund Revenue
23 Bonds that cannot be current refunded on a tax-exempt basis, to offer such Bonds for sale to the

owners thereof for sale to the Authority, to reduce the cost of refunding such Bonds; the purchase price of such bonds to be derived from a portion of the proceeds of the Series 2016 MFR Senior Lien Bonds (referred to herein as the “Invitation to Offer”); and

WHEREAS, the Government desires to stimulate the economy by financing the construction and or reconstruction of certain critical Government facilities through the development, improvement, construction and/or reconstruction of certain capital improvement projects and providing working capital for certain critical Government operations each described more particularly in Section 2 of this Act; and

WHEREAS, the Authority has entered into an Indenture of Trust, dated as of May 1, 1998, as amended and supplemented (collectively, the “Matching Fund Revenue Indenture”), authorized under the Virgin Islands Revised Organic Act, as amended, 48 U.S.C.A §1574 et seq. (West 1987) and Title 29, Chapter 15, of the Virgin Islands Code, pursuant to which the Authority previously has issued its senior lien Matching Fund Revenue bonds (the “Senior Lien Matching Fund Revenue Bonds”); and

WHEREAS, the Authority has entered into a Subordinated Indenture of Trust, dated as of July 1, 2009, as amended and supplemented (collectively, the “Diageo Subordinated Matching Fund Revenue Indenture”), authorized under the Act and 2008 V.I. Act No. 7012 and 2009 V.I. Act No. 7062, pursuant to which the Authority previously has issued its subordinate Matching Fund Revenue Bonds (Diageo) (the “Diageo Subordinated Matching Fund Revenue Bonds”); and

WHEREAS, the Authority has entered into a Subordinated Indenture of Trust, dated as of December 1, 2009, as amended and supplemented (collectively, the “Cruzan Subordinated Matching Fund Revenue Indenture”), authorized under the Act and 2009 V.I. Act No. 7127, pursuant to which the Authority previously has issued its subordinate Matching Fund Revenue Bonds (Cruzan) (the “Cruzan Subordinated Matching Fund Revenue Bonds”); and

1 **WHEREAS**, the Authority has also entered into an Indenture of Trust, dated as of
2 November 1, 1999, as amended and supplemented (collectively, the “Gross Receipts Taxes
3 Indenture”), authorized under the Act, pursuant to which the Authority has issued its bonds (the
4 “Gross Receipts Taxes Bonds”); and

5 **WHEREAS**, in order to finance all or a portion of the costs of the Series 2016 Capital
6 Projects described in Section 2 (b) of this Act, the Authority intends to issue one or more series of
7 Series 2016 Bonds secured under either the Matching Fund Revenue Indenture and/or the Gross
8 Receipts Taxes Indenture, at the discretion of the Governor, acting through the Commissioner of
9 Finance; and

10 **WHEREAS**, to acquire the real property necessary for the construction of the St. John
11 Elementary and Middle School, the Department of Property and Procurement, on behalf of the
12 Government of the Virgin Islands, in compliance with 31 V.I.C. 231a(c), intends to negotiate for,
13 and purchase, Parcel No. 537-1 Estate Chocolate Hole, No. 11 Cruz Bay Quarter, St. John, Virgin
14 Islands, as more particularly shown on O.L.G. A-9 454-T94; Parcel No. 537-2 Estate Chocolate
15 Hole, No. 11 Cruz Bay Quarter, St. John, Virgin Islands, as more particularly shown on O.L.G. A-
16 9 454-T94, Parcel No. 537-4 (AKA The Pond) Estate Chocolate Hole, No 11 Cruz Bay Quarter,
17 St. John, Virgin Islands, as more particularly shown on O.L.G. A-9-776-TO12, and Parcel No. 537
18 Remainder Estate Chocolate Hole, No 11 Cruz Bay Quarter, St. John, Virgin Islands, as more
19 particularly shown on O.L.G. A-9-776-T012 (the “St. John Real Property”); Now, Therefore,

20 ***Be it enacted by the Legislature of the Virgin Islands:***

21 **SECTION 1.** Authorization to Borrow to Finance the Series 2016 Projects.

22 (A) (1) **Authorization to Borrow on a Limited Obligation Basis or a General**
23 **Obligation Basis.** The Authority may issue the Series 2016 Bonds to provide funds to finance (i)
24 all or a portion of the costs of the Series 2016 Capital Projects in an aggregate principal amount
25 not to exceed \$292,000,000, together with the principal amount of Bonds to be issued to finance

any required reserves, costs of issuance of the Series 2016 Bonds, capitalized interest, if any, allocable to such Series 2016 Capital Projects, and the costs of any liquidity facility or bond insurance relating to such Series 2016 Bonds; and (ii) the Series 2016 MFR Refunding Project, (iii) fund any necessary reserves, (iv) pay the costs of issuance of the Series 2016 Bonds and Series 2016 Bonds Loan Notes defined in this Act, (iv) pay capitalized interest, if any, on the Series 2016 Bonds, and (v) pay the costs of any liquidity facility or bond insurance relating to the Series 2016 Bonds. Such Series 2016 Bonds must be secured, on a senior lien or subordinate lien basis, as applicable, by the Matching Fund Revenues (the “Series 2016 Matching Fund Revenue Bonds”) or the Gross Receipts Taxes Bonds (the “Series 2016 Gross Receipts Taxes Bonds”, and together with the Series 2016 Matching Fund Revenue Bonds, the “Series 2016 Bonds”), as determined by the Government and the Authority. As evidence of its obligation to repay the Series 2016 Matching Fund Revenue Bonds, the Government may issue as its Series 2016 Matching Fund Revenue Loan Notes and execute the Series 2016 Matching Fund Revenue Loan Agreements. As evidence of its obligation to repay the Series 2016 Gross Receipts Taxes Bonds, the Government may issue its Series 2016 Gross Receipts Taxes Bonds Loan Notes and execute the Series 2016 Gross Receipts Taxes Bonds Loan Agreements. The Series 2016 Gross Receipts Taxes Bond Loan Notes and the Series 2016 Gross Receipts Taxes Bonds Loan Agreements, together with the Series 2016 Matching Fund Loan Notes and the Series 2016 Matching Fund Loan Agreements, are collectively referred to herein as the “Series 2016 Loan Notes” and the “Series 2016 Loan Agreements”, respectively.

(B) (1) **Authorization to Pledge Matching Fund Revenues to Secure Series 2016 Matching Fund Revenue Bonds.** The Government may issue all or a portion of the Series 2016 Bonds as Series 2016 Senior Lien Matching Fund Revenue Bonds and pledge a first lien on and security interest in certain federal excise tax revenues (“Matching Fund Revenues”) to be received by the Government free and clear of any liens or security interests , except as provided otherwise

provided in the Act, pursuant to Title 29, Section 922 of the Virgin Islands Code, as security for repayment of the Series 2016 Senior Lien Matching Fund Revenue Loan Notes. The Special Escrow Agreement, dated as of May 1, 1998, as supplemented and amended, entered into by and between the Government, the Authority and The Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company, N.A.), as successor Special Escrow Agent (the “MFR Special Escrow Agent”), (collectively, the “MFR Special Escrow Agreement”), providing for the deposit and administration of funds for the benefit of the holders of the outstanding Senior Lien Matching Fund Revenue Bonds, the Series 2016 Senior Lien Matching Fund Revenue Bonds, and any Additional Bonds authorized under the Matching Fund Revenue Bond Indenture (“Senior Lien Matching Fund Revenue Additional Bonds”), must be maintained for so long as any of the Series 2016 Senior Lien Matching Fund Revenue Bonds or any additional loans made with the proceeds of Senior Lien Matching Fund Revenue Additional Bonds issued under a duly authorized supplement to the Matching Fund Revenue Indenture are outstanding.

In connection with the issuance of the Series 2016 Senior Lien Matching Fund Revenue Bonds, and in furtherance of the pledge of the Matching Fund Revenues authorized in this Act, the Government and the Authority are hereby authorized to execute one or more agreements or other instruments, pursuant to which (i) all Matching Fund Revenues shall continue to be delivered directly from the United States Department of the Treasury to the MFR Special Escrow Agent for deposit to the Special Escrow Fund, known as the “Matching Fund Revenue Special Escrow Account”, which account must be maintained in the custody of the MFR Special Escrow Agent and must be held separate from any other funds and accounts of the Government or such banking institution, (ii) the Government shall pledge and assign to the Authority, which shall in turn assign to The Bank of New York Mellon Trust Company, N.A., (the “Trustee”), on behalf of the holders of the outstanding Senior Lien Matching Fund Revenue Bonds, the Series 2016 Senior Lien Matching Fund Revenue Bonds, and any Senior Lien Matching Fund Revenue Additional Bonds,

1 a lien on and a security interest, in all such amounts deposited into the Matching Fund Revenue
2 Special Escrow Account, (iii) such MFR Special Escrow Agent shall remit, or cause to be remitted,
3 from amounts on deposit in the Matching Fund Revenue Special Escrow Account, *first*, to the
4 Trustee, such amounts as are necessary under the Matching Fund Revenue Indenture and all
5 supplemental indentures thereto or the respective loan agreement, to satisfy the Government's
6 payment obligations then due, *second*, (a) to the Diageo Special Escrow Agent for delivery to the
7 Trustee, each appointed in accordance with the provisions of the Agreement, dated June 17, 2008,
8 by and between the Government and Diageo USVI LLC Inc. (the "Diageo Agreement"), to the
9 extent available Matching Fund Revenues allocable to the project described in the Diageo
10 Agreement are then available, the allocable portion of such Matching Fund Revenues to satisfy (A)
11 the Government's payment obligations then due under the indenture of trust and loan agreement
12 entered into and (B) the Government's payment obligations under the Diageo Agreement, (b) to the
13 Cruzan Special Escrow Agent for delivery to the Trustee, each appointed in accordance with the
14 provisions of the Agreement, dated October 6, 2009, by and between the Government and Cruzan
15 VIRIL, Ltd. (the "Cruzan Agreement"), to the extent available Matching Fund Revenues allocable
16 to the project described in the Cruzan Agreement are then available, the allocable portion of such
17 Matching Fund Revenues to satisfy (A) the Government's payment obligations then due under the
18 indenture of trust and loan agreement entered into and (B) the Government's payment obligations
19 under the Cruzan Agreement, and *third*, to the Government for use by the Government for any lawful
20 purpose, and (iv) the Government shall covenant that, in the event the United States government
21 discontinues providing Matching Fund Revenues to the Government and substitutes another source
22 of revenues in lieu thereof, the Government shall use its best efforts to add or substitute such source
23 of revenues (the "Substitute Revenues") to pledge as security for the repayment for the Series 2016
24 Senior Lien Matching Fund Revenue Loan Notes, which Substitute Revenues will be deposited into
25 the Matching Fund Revenues Special Escrow Account, be subject to the security interest granted

1 therein and be remitted therefrom in the same manner as authorized in clauses (i), (ii) and (iii)
2 Notwithstanding any other law, rule or regulation to the contrary, upon deposit of the Matching Fund
3 Revenues into the Matching Fund Revenue Special Escrow Account, such amounts so deposited are
4 not subject to any prior lien or attachment by any creditor of the Government or by any other person
5 or entity other than the lien and security interests authorized by this paragraph (B)(1).

6 (2) **Non-Impairment Covenant.** In furtherance of the pledge of the Matching Fund
7 Revenues authorized by this Act, the Government shall covenant and agree for the benefit of the
8 holders of the outstanding Matching Fund Revenue Bonds, Series 2016 Senior Lien Matching Fund
9 Revenue Bonds and any Senior Lien Matching Fund Revenue Additional Bonds that, for so long as
10 any related loan notes issued by the Government remain unpaid, the Government shall continue to (i)
11 take all steps necessary to ensure the receipt and continued collection of Matching Fund Revenues
12 and the deposit of Matching Fund Revenues into the Matching Fund Revenue Special Escrow
13 Account, (ii) to the extent permitted by law, defend, preserve and protect such pledge, lien and
14 security interest and all rights of the holders of such loan notes against all claims and demands of third
15 parties, (iii) not revoke, terminate or amend such pledge, lien and security interest in any way that
16 materially adversely affects the rights of any holder of such loan notes or bondholders, (iv) not take
17 any action that would, directly or indirectly, result in the repeal, rescission or termination of Section
18 1574a of the Revised Organic Act (or any successor provision) or a reduction in collections of
19 Matching Fund Revenues or a restriction or reduction in application of the Matching Fund Revenues
20 in general, if such action would materially adversely affect the rights of any holder of such loan
21 notes or bondholders, or (v) not take any action or fail to take any action that will limit, restrict or
22 in any way impair in general the collection, transfer, deposit to, or disbursement of Matching Fund
23 Revenues from the Matching Fund Revenues Special Escrow Account, or allow, permit or suffer
24 to exist any prior lien, attachment or pledge ,other than any lien and pledge authorized in this Act,

of Matching Fund Revenues deposited into or required to be deposited into the Matching Fund Revenues Special Escrow Account.

(3) **Authorization to Assign Series 2016 Senior Lien Matching Fund Revenue Loan Notes and Series 2016 Senior Lien Matching Fund Revenue Loan Agreements.** In connection with the issuance by the Authority of the Series 2016 Senior Lien Matching Fund Revenue Bonds, the Authority may assign to the Trustee, for the benefit of the holders of the Series 2016 Senior Lien Matching Fund Revenue Bonds, the Authority's rights and interest in, to and under the Series 2016 Senior Lien Matching Fund Revenue Loan Notes and the Series 2016 Senior Lien Matching Fund Revenue Loan Agreements or other instruments authorized in this Act , subject to and in accordance with the terms of the Matching Fund Revenue Indenture and the Series 2016 Senior Lien Matching Fund Revenue Loan Agreements.

(4) **Authorization to Execute All Necessary Agreements.** The Government, acting by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as Chairman , or such other member, designated in the resolution of the Authority, each may (i) execute and deliver all documents and agreements necessary or advisable in connection with the issuance of the Series 2016 Bonds authorized in this Act, (ii) loan the proceeds of the Authority's Series 2016 Bonds to the Government as contemplated in this Act, and (iii) pay all expenses associated with the issuance of the Series 2016 Bonds authorized in this Act, including, without limitation, any costs or expenses required to be paid by or in relation to the Series 2016 Senior Lien Matching Fund Revenue Loan Agreement authorized in this Act, including the Invitation to Offer, any liquidity facility or bond insurance policy relating to the Series 2016 Senior Lien Matching Fund Revenue Bonds.

(C) (1) **Authorization to Borrow on a General Obligation Basis and to Pledge Gross Receipts Taxes to Secure the 2016 Gross Receipts Taxes Bonds.** The Authority may issue all or a portion of the Series 2016 Bonds as Gross Receipts Taxes Bonds to provide funds to (i) finance

1 all or a portion of the costs of the Series 2016 Projects, (ii) fund any necessary reserves, (iii) pay
2 the costs of issuance of the Series 2016 Gross Receipts Taxes Bonds and the Series 2016 Gross
3 Receipts Taxes Bonds Loan Notes, (iv) pay capitalized interest, if any, on the Series 2016 Bonds,
4 and (v) pay the costs of any liquidity facility or bond insurance relating to the Series 2016 Gross
5 Receipts Taxes Bonds. The Government may issue its Series 2016 Gross Receipts Taxes Bonds
6 Loan Notes and execute the Series 2016 Gross Receipts Taxes Bonds Loan Agreements to evidence
7 its obligation to repay the Series 2016 Project Loan Notes and to pledge its full faith and credit and
8 taxing power and the Gross Receipts Taxes imposed and the resulting tax revenues collected and to
9 be collected by the Government ,together with all fines, interest, penalties and other charges
10 assessed, imposed or otherwise payable in relation to such taxes and revenues, pursuant to Title 33,
11 Section 43 of the Virgin Islands Code (“Gross Receipts Tax Revenues”), as security for repayment
12 of the Series 2016 Gross Receipts Taxes Bonds Loan Notes, subject and subordinate to the Required
13 Annual Moderate Income Housing Fund Deposit. The Special Escrow Agreement, dated as of
14 November 1, 1999, entered into by and between the Government, the Authority and The Bank of
15 New York Mellon Trust Company, N.A., as successor Special Escrow Agent (the “GRT Special
16 Escrow Agent”), as amended (collectively, the “GRT Special Escrow Agreement”); and the
17 Collecting Agent Agreement, dated as of November 1, 1999, entered into by and among the
18 Government, the Authority, the GRT Special Escrow Agent and First Bank Puerto Rico, as successor
19 Collecting Agent (the “Collecting Agent”), as amended (collectively, the “Collecting Agent
20 Agreement”), providing for the deposit and administration of funds for the benefit of the holders of
21 the outstanding Gross Receipts Taxes Bonds, the Series 2016 Gross Receipts Taxes Bonds and any
22 Additional Bonds issued pursuant to the Gross Receipts Taxes Bonds Indenture (the “Gross Receipts
23 Taxes Bonds Additional Bonds”) must be maintained for so long as any of the Series 2016 Gross
24 Receipts Taxes Bonds or any additional loans made with the proceeds of Additional Bonds issued

1 under a duly authorized supplement to the Gross Receipts Taxes Bonds Indenture for the Series 2016
2 Gross Receipts Taxes Bonds are outstanding.

3 In connection with the issuance of the Series 2016 Gross Receipts Taxes Bonds and in
4 furtherance of the pledge of the Gross Receipts Tax Revenues authorized herein, the Government and
5 the may execute one or more agreements or other instruments, pursuant to which (i) all Gross Receipts
6 Tax Revenues must continue to be delivered directly from the Virgin Islands Internal Revenue Bureau
7 to the Collecting Agent for deposit to the GRT Special Escrow Agent for deposit to the Special
8 Escrow Account, known as the “Gross Receipts Taxes Bonds Special Escrow Account”, which
9 account must be maintained in the custody of the GRT Special Escrow Agent and must be held
10 separate from any other funds and accounts of the Government or such banking institutions, (ii) the
11 Government shall pledge and assign to the Authority, which shall in turn assign to the Trustee, on
12 behalf of the holders of the outstanding Gross Receipts Taxes Bonds, the Series 2016 Gross Receipts
13 Taxes Bonds and any Gross Receipts Taxes Bonds Additional Bonds, a first lien on and a security
14 interest in all such amounts deposited into the Gross Receipts Taxes Bonds Special Escrow Account,
15 (iii) the GRT Special Escrow Agent shall remit, or cause to be remitted, from amounts on deposit in
16 the Gross Receipts Taxes Bonds Special Escrow Account) *first*, to the Trustee, such amounts as are
17 necessary under the Gross Receipts Taxes Bonds Indenture and any supplemental indenture thereto
18 or the respective loan agreement, to satisfy the Government’s payment obligations then due, and
19 *second*, to the Government for use by the Government for any lawful purpose, and (iv) the
20 Government shall covenant that, in the event the Government discontinues the imposition of the Gross
21 Receipts Tax Revenues and substitutes another source of revenues in lieu thereof, the Government
22 shall use its best efforts to add or substitute such source of revenues (the “Substitute Revenues”) to
23 pledge as security for the repayment for the Series 2016 Gross Receipts Taxes Bonds Loan Notes,
24 which Substitute Revenues must be deposited into the Gross Receipts Taxes Bonds Special Escrow
25 Account, be subject to the security interest granted therein and be remitted therefrom in the same

manner as authorized in clauses (i), (ii) and (iii) . Notwithstanding any other law, rule or regulation to the contrary, upon deposit of the Gross Receipts Tax Revenues into the Gross Receipts Tax Special Escrow Account, such amounts so deposited are not subject to any prior lien or attachment by any creditor of the Government or by any other person or entity other than the lien and security interests authorized by this paragraph (C) (1).

(b) **Authorization to Assign Series 2016 Gross Receipts Taxes Loan Notes and Series 2016 Gross Receipts Taxes Loan Agreements.** In connection with the issuance by the Authority of the Series 2016 Gross Receipts Taxes Bonds, the Authority may assign to the Trustee, for the benefit of the holders of the Series 2016 Gross Receipts Taxes Bonds, the Authority's rights and interest in, to and under the Series 2016 Gross Receipts Loan Notes and the Series 2016 Gross Receipts Taxes Loan Agreements or other instruments authorized in this act, subject to and in accordance with the terms of the Gross Receipts Taxes Bonds Indenture and the Series 2016 Gross Receipts Taxes Loan Agreements.

(D) (1) **Authorization to Pledge Matching Fund Revenues to Secure the Series 2016 Diageo Subordinated Matching Fund Revenue Bonds.** The Government may pledge the Matching Fund Revenues to be received by the Government from excise taxes collected from the sale of rum produced at the Diageo distillery for sale in the United States (the "Diageo Incremental Cover-Over Revenues") pursuant to the terms of the Diageo Agreement, subject to the existing prior lien and security interest of the Matching Fund Revenue Indenture, as security for repayment of the Series 2016 Subordinated Diageo Matching Fund Revenue Loan Note. The Special Escrow Agreement and the Diageo Special Escrow Agreement, dated June 1, 2009, by and between the Government, the Authority and the Diageo Special Escrow Agent (the "Diageo Project Special Escrow Agreement"), provide for the deposit and administration of funds for the benefit of the holders of the Outstanding Senior Lien Matching Fund Revenue Bonds, Additional Senior Lien Matching Fund Revenue Bonds, the Subordinated Diageo Matching Fund Revenue Bonds and any

1 Additional Subordinated Diageo Matching Fund Revenue Bonds, and must be maintained for so
2 long as any of the Diageo Subordinated Matching Fund Revenue Bonds or any additional loans
3 made with the proceeds of Additional Diageo Subordinated Matching Fund Revenue Bonds issued
4 under a duly authorized supplement to the Diageo Subordinated Matching Fund Revenue
5 Indenture for the Diageo Subordinated Matching Fund Revenue Bonds (“Additional Diageo
6 Subordinated Matching Fund Revenue Bonds”) are outstanding.

7 (2) **Authorization to Pledge Diageo Incremental Cover-Over Revenues.** The
8 Government may pledge the Diageo Incremental Cover-Over Revenues to be received by the
9 Government, subject to the prior lien of the Matching Fund Revenue Indenture and the terms and
10 conditions of the Diageo Agreement, as security for repayment of the Series 2016 Diageo
11 Subordinated Matching Fund Revenue Loan Note.

12 (3) **Authorization to Assign the Series 2016 Diageo Subordinated Matching Fund**
13 **Revenue Loan Agreement.** In connection with the issuance by the Authority of the Series 2016
14 Diageo Subordinated Matching Fund Revenue Bonds, the Authority may assign to the Trustee,
15 for the benefit of the holders of the Series 2016 Diageo Subordinated Matching Fund Revenue
16 Bonds, the Authority’s rights and interest in, to and under the Series 2016 Diageo Subordinated
17 Matching Fund Revenue Loan Note and the Series 2016 Diageo Subordinated Matching Fund
18 Revenue Loan Agreement or other instruments authorized in this Act, subject to and in accordance
19 with the terms of the Diageo Subordinated Matching Fund Revenue Indenture and the Series 2016
20 Diageo Subordinated Matching Fund Revenue Loan Agreement.

21 (E) (1) **Authorization to Pledge Matching Fund Revenues to Secure the Series 2016**
22 **Cruzan Subordinated Matching Fund Revenue Bonds.** The Government may pledge the
23 Matching Fund Revenues to be received by the Government from excise taxes collected from the
24 sale of the rum produced at the Cruzan distillery for sale in the United States (the “Cruzan

Incremental Cover-Over Revenues”), pursuant to the terms of the Cruzan Agreement, subject to the existing prior lien and security interest of the Matching Fund Revenue Indenture, as security for repayment of the Series 2016 Subordinated Cruzan Matching Fund Revenue Loan Note. The Special Escrow Agreement and the Cruzan Special Escrow Agreement, dated December 1, 2009, by and between the Government, the Authority and the Cruzan Special Escrow Agent (the “Cruzan Project Special Escrow Agreement”), provide for the deposit and administration of funds for the benefit of the holders of the Outstanding Senior Lien Matching Fund Revenue Bonds, Additional Senior Lien Matching Fund Revenue Bonds, the Subordinated Cruzan Matching Fund Revenue Bonds and any Additional Subordinated Cruzan Matching Fund Revenue Bonds, must be maintained for so long as any of the Cruzan Subordinated Matching Fund Revenue Bonds or any additional loans made with the proceeds of Additional Cruzan Subordinated Matching Fund Revenue Bonds issued under a duly authorized supplement to the Cruzan Subordinated Matching Fund Revenue Indenture for the Cruzan Subordinated Matching Fund Revenue Bonds (“Additional Cruzan Subordinated Matching Fund Revenue Bonds”) are outstanding.

(2) **Authorization to Pledge Cruzan Incremental Cover-Over Revenues.** The Government may pledge the Cruzan Incremental Cover-Over Revenues to be received by the Government, subject to the prior lien of the Matching Fund Revenue Indenture and the terms and conditions of the Cruzan Agreement, as security for repayment of the Series 2016 Cruzan Subordinated Matching Fund Revenue Note.

(3) **Authorization to Assign the Series 2016 Cruzan Subordinated Matching Fund Revenue Loan Agreement.** In connection with the issuance by the Authority of the Series 2016 Cruzan Subordinated Matching Fund Revenue Bonds, the Authority may assign to the Trustee, for the benefit of the holders of the Series 2016 Cruzan Subordinated Matching Fund Revenue Bonds, the Authority’s rights and interest in, to and under the Series 2016 Cruzan Subordinated Matching Fund Revenue Loan Note and the Series 2016 Cruzan Subordinated Matching Fund

1 Revenue Loan Agreement or other instruments authorized in this Act, subject to and in accordance
2 with the terms of the Cruzan Subordinated Matching Fund Revenue Indenture and the Series 2016
3 Cruzan Subordinated Matching Fund Revenue Loan Agreement.

4 (F) The pledge of Matching Fund Revenues made by the Government to secure all
5 Series 2016 Matching Fund Revenue Bonds is valid and binding from the time when the pledge is
6 made; and such Series 2016 Matching Fund Revenue Bonds are immediately be subject to the lien
7 of such pledge without any physical delivery thereof or further act; and the lien of such pledge is
8 valid and binding as against all parties having claims of any kind in tort, contract or otherwise
9 against the Government irrespective of whether such parties have notice thereof.

10 (G) The pledge of Gross Receipts Taxes made by the Government to secure all Series
11 2016 Gross Receipts Taxes Bonds is valid and binding from the time when the pledge is made;
12 and such Gross Receipts Taxes Bonds are immediately subject to the lien of such pledge without
13 any physical delivery thereof or further act; and the lien of such pledge is valid and binding as
14 against all parties having claims of any kind in tort, contract or otherwise against the Government
15 irrespective of whether such parties have notice thereof.

16 (H) **Authorization to Execute All Necessary Agreements.** The Government, acting
17 by the Governor or Commissioner of Finance, and the Authority, acting by the Governor as
18 Chairman, or such other member or members designated in the resolution of the Authority, each
19 may:

20 (1) execute and deliver all documents and agreements necessary or advisable
21 in connection with the issuance of the Series 2016 Bonds authorized herein,

22 (2) loan the proceeds of the Authority's bonds to the Government as
23 contemplated herein, and

24 (3) pay all costs and expenses associated with the issuance of the bonds, notes,
25 and other evidence of indebtedness authorized in this act, including, without limitation, any

1 costs or expenses required to be paid by or in relation to the Series 2016 Loan Agreements
 2 authorized herein, including the Invitation to Offer, any liquidity facility or bond insurance
 3 policy relating to the Series 2016 Bonds. As evidence of its obligation to repay any Series
 4 2016 Matching Fund Revenue Bonds, the Government may issue its Series 2016 Matching
 5 Fund Revenue Loan Notes and execute one or more loan agreements with respect thereto,
 6 on a senior lien or subordinate lien basis as provided above, (the “Series 2016 Matching
 7 Fund Revenue Loan Agreements”). As evidence of its obligation to repay any Series 2016
 8 Gross Receipts Taxes Bonds, the Government may issue its Series 2016 Gross Receipts
 9 Taxes Loan Notes and to execute one or more loan agreements with respect thereto (the
 10 “Series 2016 Gross Receipts Taxes Loan Agreements”).

11 **SECTION 2. Series 2016A Projects.**

12 (a) The Legislature finds that there exists in the Virgin Islands a critical need for
 13 infrastructure development and economic stimulus through capital investment and local
 14 construction, development and Government capital improvement projects and the funding of
 15 working capital for certain critical Government operations. Proceeds of a portion of the Series
 16 2016 Bonds must be applied to pay some or all of the costs of the Series 2016 Capital Projects,
 17 each as described in subsection (b).

18 (b) The Series 2016 Projects are:

Project	Capital Projects	Working Capital
Department of Education - construction, renovation and equipping of certain Department of Education facilities	\$20,000,000	
Landfill Closures - construction and other costs related to the Bovoni Landfill and Anguilla Landfill closures	20,000,000	
Virgin Islands Waste Management Authority - operating expenses		\$ 6,000,000
Hospitals - working capital for Juan F. Luis Hospital and Roy Lester Schneider Medical Center		20,000,000

WICO/GERS Havensight - construction of infrastructure improvements to modernize the WICO/Havensight complex	5,000,000
Government Historical Properties Improvements-construction, renovation and equipping of Government historical properties on the islands of St. Croix, St. Thomas and St. John	20,000,000
Fire Stations – construction and equipping of a new fire station on each of the islands of St. Croix and St. John	14,000,000
Frederiksted Revitalization Project – acquisition of real property and construction of infrastructure and capital improvements related to the Paul E. Joseph Stadium and the revitalization of Frederiksted	12,000,000
Department of Sports & Recreation – construction, renovation and equipping of the Lionel Roberts Stadium and the Winston Raymo Recreation Center and improvements to recreational facilities in Christiansted including, but not limited to, construction of National Hot Rod Association tracks, beach and park improvements	34,000,000
Department of Finance Building Improvements – construction and equipping of two wings of the Department of Finance building for occupation by certain operations of the Office of Management and Budget and the Bureau of Information Technology	8,000,000
Virgin Island Police Department/Virgin Islands Bureau of Corrections (Golden Grove) – construction, renovation and improvements to facilities of the Virgin Islands Police Department and the Bureau of Corrections at Golden Grove Correctional Facility	13,000,000
Department of Planning and Natural Resources – construction of improvements to, renovation and equipping of an existing building for occupation by the Department of Planning and Natural Resources	6,000,000
Department of Justice – construction and equipping of a new administrative building on the island of St. Croix for occupation by the Department of Justice	23,000,000
Bureau of Motor Vehicles – construction of new administrative buildings, or construction of improvements to existing buildings, on the islands of St. Croix and St. Thomas	7,000,000
Office of the Lt. Governor – construction of a new administrative office building for occupation by certain operations of the office of the Lieutenant Governor on the island of St. Croix	6,000,000
St. Croix International Multipurpose Sports Complex – construction and equipping of a new multipurpose sports complex on the island of St. Croix	22,000,000

St. John Elementary and Middle School – acquisition of land, construction and equipping of a new elementary and middle school on the island of St. John	32,000,000	
VITEMA – construction and equipping of a new administrative building on the island of St. Croix for VITEMA/911	\$18,000,000	
Superior Court of the Virgin Islands – acquisition of real property and the construction of an expansion to Superior Court facilities at Estate Kingshill for the Superior Court ancillary services and programs on the island of St. Croix and construction of improvements to the Alexander A. Farrelly Justice Complex on the island of St. Thomas	<u>\$6,000,000</u>	
Sub-Total	<u>\$266,000,000</u>	<u>\$26,000,000</u>
Grand Total		<u>\$292,000,000</u>

1 (c) If for any reason, including federal income tax purposes or other legal
2 considerations, the Authority is unable to finance any Series 2016A Capital Project as authorized
3 in subsection (b), the authorization to finance the remainder of the Series 2016 Capital Projects in
4 this Section is not affected thereby and the Governor, on behalf of the Government, may finance
5 such other capital infrastructure improvements from unexpended proceeds for projects as the
6 Governor considers appropriate.

7 **SECTION 3. Interest Rate and Term.**

8 Neither the Series 2016 Gross Receipts Taxes Bonds, the Series 2016 Matching Fund
9 Revenue Bonds, the Series 2016 Gross Receipts Taxes Loan Notes nor the Series 2016 Matching
10 Fund Revenue Loan Notes may bear interest at a rate in excess of 9 percent per annum on any
11 federally tax-exempt or federally taxable bonds. The respective terms of the Series 2016 Gross
12 Receipts Taxes Bonds, the Series 2016 Matching Fund Revenue Bonds, the Series 2016 Gross
13 Receipts Taxes Loan Notes or the Series 2016 Matching Fund Loan Notes must not exceed 30
14 years from the date of their issuance.

15 **SECTION 4. Acquisition of Real Property for St. John Elementary and Middle**
16 **School.** Pursuant to 31 V.I.C. 231a(c), the Department of Property and Procurement, on behalf of

the Government of the Virgin Islands, may negotiate, and shall acquire through purchase, the St. John Real Property as the site for the construction of the St. John Elementary and Middle School consisting, more or less, of 13.375 acres.

BILL SUMMARY

Section 1 of the bill authorizes the issuance of bonds of the Government of the Virgin Islands and/or the Virgin Islands Public Finance Authority to finance all or a portion of the costs of certain capital projects and working capital listed in Section 2 of the bill in a principal amount not to exceed \$292,000,000, together with the principal amount of Bonds to finance any necessary reserves and costs of issuance), secured by a senior lien or subordinate lien on Matching Fund Revenues, as applicable, and/or Gross Receipts Taxes, refund and restructure the debt service on all or a portion of various series of outstanding Matching Fund Revenue Bonds, refund and restructure the debt service on all or a portion of various series of outstanding Gross Receipts Taxes Bonds fund any necessary reserves in connection with the Series 2016 Bonds and € pay the costs of issuance of the Series 2016 Bonds. The bill authorizes the bonds to be secured by either Matching Fund Revenues or Gross Receipts Taxes;

Section 2 of the bill authorizes the capital projects and working capital projects to be financed from the proceeds of the Series 2016 Bonds.

Section 3 of the bill provides that the Series 2016 Bonds must bear interest at a rate not to exceed nine and one-half percent (9½%) per annum on a federally tax-exempt or federally taxable basis and have a maximum maturity not to exceed thirty (30) years.

Section 4 of the bill provides that the Department of Property and Procurement, on behalf of the Government of the Virgin Islands, is authorized to negotiate, and is mandated to acquire through purchase, the St. John Real Property as the site for the construction of the St. John Elementary and Middle School.

REVIEWER'S NOTE

Inasmuch as this is a governor's bill, no substantive changes were made by the Legal Counsel's Office. However, Section 5, the effective date, which read: "This Act shall take effect immediately upon approval of the Governor", was removed from the bill. The provision is superfluous inasmuch as the Uniform Statutory Interpretation Act codified at title 1, section 52 of the Virgin Islands Code provides: "Unless otherwise specifically provided therein, the effective date of bills enacted by the Legislature shall be the date of approval of same by the Governor, or the date such bill becomes law without his approval as provided in section 9, subsection (d) of the Revised Organic Act of 1954."

Although section 4 of the bill mandates the Department of Property and Procurement "shall acquire through purchase, the St. John Real Property as the site for the construction of the St. John Elementary and Middle School consisting, more or less, of 13.375 acres, section 4 does not mandate the government to acquire Parcel Nos. 537-1, 537-2, 537-4, and 537 Remainder, Estate Chocolate Hole, No. 11 Cruz Bay Quarter, St. John. The foregoing legal description of the real property to be acquired is mentioned only in the preamble to the bill. A preamble in a bill is not

1 part of the law and cannot be used to create rights, obligations or mandates that are not found
2 within the purview of the statute. Therefore, if the Legislature intends that the real property
3 identified in the preamble is the real property that the Government must purchase, section 4 should
4 be amended to include the legal description of the subject property.
5

6 After the bill is heard in the Committee of the Whole it should be revised for purposes of
7 making it more readable and it numerous provisions easier to cite by reorganizing the provisions
8 in section 1 into several separate sections and re-designating the divisions within the sections
9 according to established statutory number conventions.

10 **BR 16-1358/September 9, 2016/Reviewed by YLT**

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